

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1921 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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TEE VEE TRADING CORPORATION

Versus

STATE OF GUJARAT

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Appearance:

MR CC TRIVEDI for Petitioner

None present for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/97

C.A.V. JUDGEMENT

1. The petitioner, Tee Vee Trading Corporation through its Managing Partner, filed this special civil application in this Court and prayer has been made for quashing and setting aside of the impugned order annexure 'I' dated 12-12-1985, annexure 'G' dated 28-8-1985 so far it relates to the confiscation of Rs.250/- of petitioner's deposit. This order has been passed by the respondent under the provisions of the Essential

Commodities Act, 1955 and the Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as 'the Order, 1981').

2. The proceedings have been initiated against the petitioner for contravention of clause 24 of the Order, 1981 by giving the show-cause notice dated 13th May, 1985 by the District Supply Officer, Banaskantha to the petitioner. It has been found that the petitioner had sold kerosene after taking money in advance and as such, he was not doing business by his own money but by taking money of other licensees in advance and this has violated the instructions given by the competent authority under clause 24 of the Order, 1981. It has further been alleged that the petitioner had taken advance from Chamunda Automobiles, a licensee of Deesa, and not given the stock of kerosene. The reply to the show-cause notice has been submitted by the petitioner but the District Supply Officer was not satisfied with the reply of the petitioner and taking it to be a case of serious default on the part of the petitioner ordered for forfeiture of Rs.500/- of its deposit. Against this order, the petitioner preferred an appeal before the Collector, Banaskantha which came to be partly allowed under the order dated 28th August, 1985 and the amount of forfeiture was reduced to Rs.250/-. Still the petitioner was not satisfied and as such he has taken up the matter further in revision to the State Government, which came to be rejected under the order dated 12th December, 1986. Hence, this special civil application.

3. The respondents have not filed any reply to this special civil application.

4. The counsel for the petitioner contended that the circular dated 14th October, 1984 is illegal and ultravires and even if any contravention has been made the authorities below could not have passed the order for forfeiture of the deposit of the petitioner. It has next been contended that the direction given under the aforesaid circular prohibiting for taking advance payment is unreasonable and arbitrary. The counsel for the petitioner further contended that it is not the case of any advance money taken but the dealer himself had voluntarily given the amount and within very short period the delivery of the goods has been given. Lastly, the counsel for the petitioner contended that the order of the three authorities below suffers from the vice of non-application of mind.

5. I have given my thoughtful consideration to the

submissions made by the learned counsel for the petitioner.

6. Clause 24 of the Order, 1981 provides that the State Government, the Director of Civil Supplies, the Director of Food, the Collector of District or any Licensing Authority may in accordance with the provisions of this order and for ensuring fair and equitable distribution of essential articles by general or special order, issue to any dealer or producer or class of dealers or producers such direction regarding maintenance of accounts, maintenance of stocks, storage, sales, submission of returns, furnishing information, display of prices, issuance of invoice or cash memo, weighment, disposal, delivery or distribution of any essential article as it or he may deem fit. That clause further provides that every dealer or producer to whom any direction is issued under sub-clause (1) shall comply with such direction.

7. The circular, annexure 'J' dated 14th December, 1984 has been issued by the Collector Banaskantha, in exercise of its powers as conferred upon him under clause 24 of the Order, 1981. This circular provides that the agents should not take advance money while giving kerosene to wholesaler/retailers, according to allotment. The counsel for the petitioner has challenged the competence of the Collector as what he contended that no such power has been conferred upon the Collector to issue such a circular. Clause 24 of the Order, 1981 is sufficiently wide and to ensure fair and equitable distribution of essential articles, such a restriction could have been put upon the agents. The condition which has been put upon the agents under clause 24 of the Order, 1981 cannot be said to be arbitrary, illegal or without any competence. The Essential Commodities Act, 1955 and the orders framed thereunder have to be given effect to in a manner to ensure fair and equitable distribution of the essential articles. To ensure the fair and equitable distribution of essential articles, the Collector has issued a reasonable circular and the petitioner being agent was bound by the same. This circular has been issued so that the wholesale dealers or retailers may not get the advantage of the supply to earn the heavy profit. Ultimately it may affect the consumers for whose benefit this law has been enacted. To overcome this mischief and for equal distribution of essential articles, the Collector was perfectly justified to put such a condition to the agent. This circular does not in any manner infringe the fundamental right of the petitioner as there under Article 19 (1) (g) of the

Constitution. The learned counsel for the petitioner has utterly failed to satisfy this Court how this circular prevents the business to be carried out by the petitioner. The first contention of the counsel for the petitioner is devoid of any substance.

8. The second contention of the counsel for the petitioner is equally of no merits. From the orders of the authorities below, I am satisfied that the petitioner was taking the advance money from the wholesale dealers or retailers and the authorities have given out details of the advance money taken and stock of kerosene so delivered. If we go by that statement of fact, it is a clear case of taking of the advance money and then to sell to the concerned retailer. The petitioner all the time was taking money in advance and the supply was given in such a way that he retains sufficient amount with him. Further facts have come on record that the concerned persons were not giving the advance money voluntarily. If it would have been a case of giving of advance money voluntarily then no occasion for the person concerned to make the complaint against the petitioner would have arisen. This theory of the petitioner of giving of advance money voluntarily to it by the wholesalers or retailers is not accepted by the authorities below and I do not find any perversity in the approach of the authorities below. It is a clear case where the petitioner has contravened the circular issued under clause 24 of the Order, 1981 and no exception can be taken to the order which have been passed in the present case by the authorities below. The appellate authority has taken a lenient view in the matter and the amount of forfeiture has been reduced from Rs.500/- to Rs.250/-.

9. The last contention of the counsel for the petitioner is nothing but only a general contention raised and after going through the orders of the authorities below, I do not find any perversity therein which calls for interference of this Court sitting under Article 226 or 227 of the Constitution.

10. Taking into consideration the totality of the facts of this case, this special civil applications fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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